

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE REGULAR SESSION OF THE
FOUNTAIN HILLS TOWN COUNCIL
DECEMBER 3, 2009**

*** CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Schlum called the meeting to order at 6:30 p.m. in the Fountain Hills Town Hall Council Chambers.

*** INVOCATION – Father Dan Robling; the Anglican Church of Atonement**

*** ROLL CALL**

Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum, Councilmember Contino, Vice Mayor Hansen, Councilmember Leger, and Councilmember Brown. Deputy Town Manager Julie Ghetty, Town Attorney Andrew McGuire and Town Clerk Bevelyn Bender were also present.

Councilmember Archambault was absent for the meeting.

*** MAYOR'S REPORT**

- (i) A review of upcoming community events.

Mayor Schlum announced upcoming community events, which were displayed as a PowerPoint.

Saturday, December 5, 2009:

- Dawn to Dusk Mountain Bike Ride, McDowell Mountain Park, 7 a.m.
- Guided Hike – McDowell Mountain Preserve, 8 a.m.
- Docent-led Art Walk, Community Center, 9 a.m.
- Global Gala to Celebrate the Season, Community Center, 2:30 p.m.
- Town's 20th Anniversary Celebration, Community Center, 3 p.m.
- Stroll in the Glow, Avenue of the Fountains, 6 p.m.

Sunday December 6, 2009

- Community Chorus Concert, Community Center, 3 and 7 p.m.

December 10, 2009

- Public Hearing, General Plan 2010, Council Chambers, 6:30 p.m.
- Fountain Hills High School Band and Choir Concert, 7 p.m.

Saturday, December 12, 2009

- Electronics Recycling, Fountain Hills High School, 9 a.m.

SCHEDULED PUBLIC APPEARANCES/PRESENTATIONS

- (i) None

CALL TO THE PUBLIC

Town Clerk Bevelyn Bender advised that there had not been any speaker cards submitted.

CONSENT AGENDA

AGENDA ITEM #1 - CONSIDERATION OF APPROVING THE TOWN COUNCIL MEETING MINUTES FROM NOVEMBER 19, 2009.

AGENDA ITEM #2 - CONSIDERATION OF THE FINAL REPLAT FOR PLAT 506-C, BLOCK 2, LOTS 29A AND 29B, LOCATED AT 16225 N. CERRO ALTO DRIVE. THE REQUEST CONSTITUTES A LOT DIVISION. CASE#S2009-08.

Councilmember Brown **MOVED** to approve the Consent Agenda as listed (items 1 and 2) and Councilmember Dickey **SECONDED** the motion. A roll call vote was taken with the following results:

Councilmember Dickey	Aye
Mayor Schlum	Aye
Vice Mayor Hansen	Aye
Councilmember Leger	Aye
Councilmember Contino	Aye
Councilmember Brown	Aye
Councilmember Archambault	Absent

The motion **CARRIED UNANIMOUSLY** by a vote of those members present (6-0).

REGULAR AGENDA

AGENDA ITEM #3 - CONSIDERATION OF THE TRANSFER OF FUNDS FOR THE LANDSCAPE DESIGN OF FOUNTAIN PARK UNDER THE GREENING OF DOWNTOWN PROJECT FROM THE DOWNTOWN VISIONING PLAN.

Parks and Recreation Director Mark Mayer reviewed that at the November 10th work-study session Mr. Jerry Butler had talked about the possible funding for a concept plan under the Greening of the Downtown for Fountain Park that was to cover the cost of a landscape architect for the project design. The Council had indicated that evening that staff was to find a potential funding source and to bring that information back to the Council. He stated that in the staff report he had prefaced the fact that they were looking at the potential for using some Capital Improvement budget funds that were left over from the Fountain Hills Boulevard Sidewalks project (Project #S6006). He explained that since he had written that report there had been an additional funding source identified (potential revenues might be available from the Downtown Development Funds). He noted that those funds could potentially be available if the Council so chose to use them. He ended his report saying that he would be happy to answer any questions as were Deputy Town Manager Julie Ghatti, Mr. Jerry Butler, and Parks and Recreation Commissioner Fred Bedell who was serving as chair of the group that would be working towards the visioning and landscape architect plans for Fountain Park.

Mayor Schlum thanked Mr. Mayer for his presentation and asked if anyone wished to speak on this item. Town Clerk Bender replied no one had turned in a speaker card on this item.

Councilmember Leger **MOVED** to approve the transfer of funds Capital Improvement Project #E8006, which were from the Downtown Development Fund, in the amount of \$15,000, for the design work for the greening of Downtown relative to the Downtown Vision Plan. Councilmember Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** by a vote of those members presents (6-0).

AGENDA ITEM #4 - QUARTERLY UPDATE BY THE DIRECTOR OF PLANNING AND ZONING ON ACTIVITIES AND PROJECTS.

Planning and Zoning Director Richard Turner reviewed a PowerPoint presentation relative to this item. Mr. Turner discussed the Department's current projects and activities beginning with the most substantive, the new General Plan 2010. He noted that the Planning and Zoning Commission held the first of two public hearing required earlier this week at the Community Center, to be followed by the second public hearing to be held next Thursday in the Council Chambers, which would then be followed by a public hearing in front of the Council one week later (December 17). He said that at that meeting the Council would benefit from having the Planning and Zoning Commission's recommendation; the Council would then be asked to make their decision on the

General Plan. He discussed the Downtown Vision Plan, which the Council had approved in September. He said that staff was currently processing it as an Area Specific Plan. He explained that an Area Specific Plan was a tool that was authorized by State Statute and was between a General Plan and zoning in terms of its specificity; however, staff was following the General Plan in terms of process, so at each of the hearings for the General Plan, the next item on the agenda was the Area Specific Plan. He noted, therefore, that the Council would also see it on their agenda on the 17th and that they would also have the Planning and Zoning Commission's recommendation on that item. Mr. Turner explained that following the discussion on the Area Specific Plan, staff would then consider changes to the Town Center Commercial Zoning District that would facilitate implementation of the Area Specific Plan a/k/a the Downtown Vision Plan.

Mr. Turner stated that the Council had recently initiated changes to the Zoning Ordinance that would extend the use of A-frame signs for one additional year. Staff had been asked to provide language that would clarify the purpose of A-frame signs along with a permit process for the purpose of informing the businesses about the A-frame sign rules. He stated that this would also be heard by the Council on December 17th and approximately a month later staff would be able to put that permit process into effect.

Mr. Turner indicated that staff was processing a Master Preliminary Plat on the former State Trust Land (STL). He noted that this was not a usual master preliminary plat as it consisted of larger parcels without residential lots. He noted that final arrangements for domestic water and sewer would not have been made when this plat was ready for hearing. He stated that those arrangements and decisions would be made prior to the time the Council saw a plat that included residential lots. The Planning Commission was likely to hear that plat on January 14th, with the Council hearing in early February.

Mr. Turner discussed that staff was in the final phases of reviewing a list of addresses provided by the United States Census Bureau. He stated staff was checking the list for accuracy. He reported that staff had not found any major problem so far.

Mr. Turner discussed that the Town's environmental planner had been very busy relating to the trash and recycling collection project. He pointed out that the Council had received version four of the request for proposal (RFP). He indicated that staff planned to update the homeowner associations and put the RFP on the Town's website later this month. He stated that staff welcomed comments from the Council now and the public once it had been put on the website. He announced that the environmental planner had filed grants applications earlier this week with the State Energy Office related to three energy saving projects (i.e. energy audit of the Town's buildings, solar installation on three of the Park's buildings, and a lighting retrofit at the Community Center). He indicated the grant applications totaled \$147,000 and that staff should know the award results later this month.

Mr. Turner concluded by stating that the department was adjusting their work assignments and coverage due to the recent reduction in staff (four positions: two building inspectors, a building technician, a GIS/CAD operator). He assured the Council that staff was working hard to reduce the impact and to maintain excellent customer services, which was what the Town was all about.

Councilmember Dickey shared that she had contacted Mr. Turner earlier as she had wanted to know how the Council could submit their input on the General Plan. She relayed the information provided to her as that the Council should send Mr. Turner an e-mail prior to the next Planning and Zoning Commission meeting on the 10th indicating any comments or changes they would like to see.

Mayor Schlum thanked Mr. Turner for his presentation and report.

AGENDA ITEM #5 - CONSIDERATION OF ORDINANCE 09-09, AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 7, BUILDINGS AND BUILDING REGULATIONS, ARTICLE 7-10, DEVELOPMENT FEES, RELATING TO ADJUSTMENTS TO DEVELOPMENT FEES FOR THE TOWN OF FOUNTAIN HILLS.

Deputy Town Manager Julie Ghetti addressed the Council regarding this item. She noted that the process of reviewing the Town's impact fees had begun back in April with the Notice of Intent to increase the fees. She discussed what the purpose of development fees was, which was to have growth pay for growth. (i.e. to have projects paid for that were created due to the increased demand for services; projects related to growth). She spoke about what was the basis for impact fees as being projects planned out for 25 years that were a result of the growth with the fees based on the Capital Improvement Plan and which only included the portion of the projects that were allocated to growth.

Ms. Ghetti noted that there were several projects within the Capital Improvement Plan that were paid for by the Town's funds and the current taxpayers; however, the cost of growth related projects were what was used to calculate the impact fees and charged to those new residences that were constructed. She discussed why the Town hired a specialist (consultant) to determine the fees. She explained that the Town wanted to ensure that the fees were fair and equitable, to ensure consistency, and because the Town did not want the fees to be challenged. She stated that cities and towns might be inclined to put in projects that were not growth related. The purpose of having a consultant was to ensure that the fees were fair and equitable so that if the fees were challenged in court, the fees would not be reduced. She indicated that the people who did this type of work were very specialized as a specialized analysis needed to be completed and was not just a math function.

Ms. Ghetti noted that the packet contained a schedule of the proposed fees, the current fees, as well as a couple of scenarios for the Council's benefit should they want to consider fees other than the maximum recommended. She reiterated that the study recommended the maximum allowable fees, which meant that the Town could not impose fees any higher than those recommended. However, the Council was welcome to put the fees anywhere in between those figures. She indicated she was willing to answer questions.

Mayor Schlum thanked Ms. Ghetti for the presentation and asked if there were any speaker cards. Ms. Bender indicated that two speaker cards had been submitted and requested Mr. Smith to come forward.

Kelly Smith addressed the Council and indicated that he was a full-time realtor in Fountain Hills with one of his prime focuses on selling land. He stated that he had seen increases in impact fees over the years and the affect it had on real estate and growth in the Town. As of this year, there had been 36 lots sold in Fountain Hills as compared to the 200⁺ sold in 2005. He requested that the Council consider instead of hurting future growth and penalizing future home owners and businesses to stop spending money on \$800,000⁺ stop lights when a stop sign would have been sufficient in that location as there was one 300 yards down the road on the same street doing the same job. Mr. Kelley asked Dennis for confirmation on the cost of the light on Sunridge Drive, which he knew had been paid for by impact fees. He stated the opinion that projects like that seemed to be wasteful and that the Town should evaluate what they were spending their money on instead of impacting future growth. He discussed the Elman project (developer paid \$110M for the land) as not being worth today what was paid for it, opined that he was not sure the developer would continue with that project, and perhaps the Town was banking on receiving funds from permits on its future development. He did not think that would happen in the immediate future. He reiterated his request that the Council not increase the fees as it would hurt the Town's future growth, especially if they raised it that much (100%), but perhaps it could be raised a little.

Roy Kinsey addressed the Council and spoke in support of raising the development fees. He said he knew the Council had spent much time working on this matter but he was concerned about the Town's future and its opportunity to fulfill the projected growth plans without adding additional demands on existing residents and not entailing any extra burden on the new ones. Mr. Kinsey said the Council had been left with a significant error on the part of the previous Council when they chose not to increase the impact fees several years back as that had put Fountain Hills today in a very low standing relative to the entire County. He stated that all towns and cities had degrees of impact fees, that Fountain Hills was now near the bottom, and that the Town was getting deeper in the hole. He was of the opinion that with the economy and the anticipated slow growth coming, it seemed that a greater burden was being placed on the Town and its future, if the Council did not consider the possibilities that were being offered by taking what opportunities they could legally, to raise the impact fees at this time. He acknowledged that the fees were on a tabled motion but he felt it was important to have them on

the books as there were lesser opportunities with a decreased budget next year. He stated the opinion that they would be in a much better position if the fees were on the books at the consultant's recommended maximum amount.

Councilmember Dickey stated the fiscal impact section on the staff report was a very succinct way of stating this, "Development fees are intended to pay for growth; if there are insufficient or not development fees then those costs must be borne by existing taxpayers through other revenue sources." She said she felt a responsibility to support Red Oak's recommendation, noting that the Town had paid over \$65K to advise the Council for this 100% cost recovery. By saying it was 100% recovery, it was not 100% of all of the needs and infrastructure for us, it was the portion that could be attributed to growth.

Councilmember Dickey **MOVED** to approve Ordinance 09-09, amending the Town Code, Chapter 7, relating to Building and Building Regulations with the fees as proposed by Red Oak Consulting for 100% cost recovery.

Mayor Schlum asked if the motion was in proper format based on the charts that the Council was looking at and if Councilmember Dickey was referencing the column as indicated at 100% recovery and Councilmember Dickey responded yes she was. Mr. McGuire confirmed that Ordinance 09-09 was drafted in that form based on the consultant's recommendation.

Mayor Schlum asked if there was second to the motion. Councilmember Leger **SECONDED** the motion for the purpose of discussion.

Councilmember Brown noted that he had spent a great deal of time on this; needless to say it affected his industry as much as any industry. He stated that his conclusion, after coming to the understanding what the fee was actually used for, knowing the needs of the funds for the Town, and trying to stay consistent with the neighboring communities, was that he could not and would not support 100% down the line. However, he could support single and multi-family at the rates of \$10,459 and \$8,787. He stated the opinion that he did not feel that would slow construction in either construction industry. Councilmember Brown noted that he had watched the neighboring communities that had fees greater than the Town even at this rate and it had not slowed them up. He stated that regarding Commercial he had a different opinion. He said he would not support \$9.37 per square foot, as a 10,000 square foot building would calculate a fee of about \$93,000; however, he would support \$5.00 a square foot (in essence was 5% of the cost of the building itself) but \$9.37 a square foot was too much. He continued saying he would support \$4.00 a square foot for offices, \$3.42 for hotels, and \$2.40 per square foot for Industrial. Councilmember Brown reiterated that these numbers were the result of his giving this matter a great deal of thought but he did not know how the rest of the Council felt. He indicated that these numbers were at the maximum amount he felt he could go.

Mayor Schlum asked, if that amendment was in a format that could be worked with, should it be seconded and accepted. Mr. McGuire responded it was and that staff had a spread sheet ready to calculate any combination that the Council came up with. Mayor Schlum asked if there was a second to the amendment and then chose to **SECOND** the amendment himself as proposed by Councilmember Brown.

Vice Mayor Hansen requested that Councilmember Brown repeat his amendment. Mayor Schlum removed his second so that Councilmember Brown could restate the amendment.

Councilmember Brown moved to **AMEND** the motion keeping the single family at \$10,459 and multi-family at \$8,787 (the maximum fees), Commercial at \$5.00 a square foot, Office at \$4.00 a square foot, Hotel at the maximum of \$3.42, and Industrial at \$2.40 a square foot. Mayor Schlum **SECONDED** the amendment and asked if there was to be any additional discussion, or if the Council was ready to vote on that.

Councilmember Leger stated that he did not know if this was out of order or a point of personal privilege relating to one of the speakers who had listed specific numbers regarding specific projects, and he noted that the Council meetings were broadcast to the public and therefore, he had a few questions that he would like to ask

the Town's Public Works Director regarding some of those comments made tonight regarding wasteful spending. He said that it was within the context of this discussion that he would ask for the privilege of asking Mr. Ward to come up.

Councilmember Leger said he did not question what was said but indicated he wanted to understand what was said. He asked Mr. Ward if he recalled the cost of the project to install the street lights at Sunridge Canyon. Mr. Ward responded that the cost was approximately \$425,000. Councilmember Leger pointed out that it was \$425,000 vs. \$800,000 as previously indicated so the source of the information at the \$800,000 amount was probably inaccurate. He asked if that \$425,000 was 100% paid from impact fees. Mr. Ward replied yes it was.

Mr. McGuire clarified that part of the payment was a contribution from the developers, which was a combination of MCO and their prior partners in that area so some of the cost was offset by an earlier contribution. Councilmember Leger acknowledged that he had understood that some of the costs were offset, so as a point of clarification he pointed out that the traffic signal did not cost \$800,000 nor did the Town spend \$425,000 in development fees for that street light. Mr. Ward agreed that was a fair statement.

Councilmember Leger said he brought this up because citizens it had brought this up before and he wanted to put out correct information. He noted that there had been a fatality at that intersection and Mr. Ward confirmed that was correct. Councilmember Leger asked if in the event the Town had a fatality at an intersection and there was a warrant for a street light and they did not initiate a traffic signal, he questioned if the Town was placed in a libelous position.

Mr. Ward said that it would put the Town in a situation whereby the signal should be considered and said there was a liability there and there were other liabilities that staff was aware of, which gave warrants for that signal. Councilmember Leger said that from his perspective and based on what was discussed this evening he did not consider the signal wasteful spending when the Town had a fatality in the community, and first and foremost the amount of money that was quoted was inaccurate. He thanked the Mayor for that point of privilege.

Mayor Schlum said that when it came to spending of any kind the Town would need to be very prudent with spending and those were not inexpensive improvements. He commented on the fact that there were others in the CIP in the plan that they were working from tonight. Town Attorney McGuire advised that the next step was to vote on the amendment. Mayor Schlum called for the vote on the amendment and Town Clerk Bender stated the amendment **CARRIED UNANIMOUSLY** by a vote of those members present (6 – 0).

Councilmember Dickey mentioned that since they were talking about the General Plan update, she wanted to point out that they thought of it as land use but the plan contained a growth element, which actually addressed timely and financially sound infrastructure, expansion, and a cost of development element. She commented that it was important to plan for these types of things. She stated that she appreciated the fact that they were going forward with this.

Mayor Schlum asked for the vote on the amended main motion. Mr. McGuire stated that, if the vote carried on these numbers, staff would then amend the specific table in Section 3 in the ordinance to match the numbers before it was executed. The Mayor requested a roll call vote on this item.

Councilmember Contino	Aye
Councilmember Dickey	Aye
Vice Mayor Hansen	Nay

Councilmember Brown and Councilmember Contino asked for clarification as to what they were voting on. Mayor Schlum confirmed that they were voting on the main motion which contained Councilmember Brown's numbers.

Councilmember Brown	Aye
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Councilmember Leger asked for a point of clarification because if they just voted on the amendment why now was the Mayor asking for a roll call vote.

Councilmember Leger and the Mayor proposed starting the roll call vote over for the purpose of clarification on the main motion as amended.

Mr. McGuire confirmed that the Council was voting on the main motion as amended by Councilmember Brown.

The motion as amended **CARRIED** on a vote of members present (5 – 1). Vice Mayor Hansen cast the nay vote.

AGENDA ITEM #6 – COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER

A. *NONE*

Mayor Schlum pointed out that staff would rework the development fee numbers. Ms. Ghetti stated that staff would publicize the fees by putting it on the Town's website and in the paper. She announced that the Budget Committee had started their budget meetings for FY 2010-11; a work-study session was scheduled for this coming Tuesday to start talking about the level of service for FY 2011.

AGENDA ITEM #8 - ADJOURNMENT

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TOWN OF FOUNTAIN HILLS

By _____
Jay T. Schlum, Mayor

ATTEST AND
PREPARED BY:

Bevelyn J. Bender, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Session held in the Council Chambers at Town Hall by the Town Council of Fountain Hills on the 3rd day of December 2009. I further certify that the meeting was duly called and that a quorum was present.

DATED this 17th day of December 2009.

Bevelyn J. Bender, Town Clerk